

Exhibit A

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

ST. CHARLES HEALTH SYSTEM, INC., an
Oregon nonprofit corporation,

Plaintiff,

v.

OREGON FEDERATION OF NURSES AND
HEALTH PROFESSIONALS, LOCAL 5017,
AFT, AFL-CIO,

Defendant.

Case No.

COMPLAINT

NOT SUBJECT TO MANDATORY
ARBITRATION

Claim for Injunctive Relief

Filing Fee: \$281.00

Statutory Authority: ORS 21.135(1), (2)(a)

Plaintiff St. Charles Health System, Inc. ("Plaintiff") alleges as follows:

1.

Plaintiff is an Oregon nonprofit corporation organized under the laws of Oregon.

2.

Plaintiff is a healthcare provider in Bend, Oregon.

3.

Defendant Oregon Federation of Nurses and Health Professionals, Local 5017, AFT,
AFL, CIO ("Defendant") is a labor organization organized under the laws of Oregon.

4.

Defendant and Plaintiff are currently negotiating the first Collective Bargaining
Agreement ("CBA") between the parties, to cover approximately 150 newly-unionized technical
employees of Plaintiff.

1 5.

2 The National Labor Relations Act (“NLRA”) governs unionizing efforts and CBA
3 negotiations, among other things.

4 6.

5 The NLRA contains requirements with which unionized healthcare workers must comply
6 before they may lawfully strike. One of these requirements is that when negotiating a first
7 contract with a hospital, a union must provide thirty days’ notice of a dispute to the Federal
8 Mediation and Conciliation Service (FMCS) and the Oregon Employee Relations Board (OERB)
9 before striking so that the assigned mediator can attempt to effect a resolution of the dispute prior
10 to a work stoppage.

11 7.

12 On February 22, 2021, Defendant served a 10-day notice for a mass strike of indefinite
13 duration scheduled to begin at 8 a.m. on March 4, 2021.

14 8.

15 Defendant’s notice failed to provide the requisite 30 days’ notice of the dispute to FMCS
16 or OERB. Accordingly, the parties have not had the benefit of mediation to attempt to resolve
17 the contract dispute prior to a work stoppage.

18 9.

19 Upon receiving Defendant’s non-compliant strike notice, Plaintiff immediately notified
20 OFNHP and requested a withdrawal of the strike notice. OFNHP refused. Plaintiff then filed a
21 charge with the National Labor Relations Board (the “NLRB”), the administrative agency that
22 adjudicates such disputes.

23 10.

24 Upon information and belief, the NLRB will be unable to adjudicate this dispute before
25 Defendant’s illegally noted strike date of March 4, 2021.

11.

If Defendant is allowed to strike before the NLRB issues its ruling, Plaintiff and the general public will be irreparably harmed given the possibility of delays in medical care and vaccine administration.

FIRST CLAIM FOR RELIEF

(Violation of the National Labor Relations Act, 29 U.S.C. 158(d)(B))

12.

Plaintiff incorporates Paragraphs 1 through 11 above herein.

13.

Defendant failed to comply with the notice requirements under 29 U.S.C. 158(d)(B) of its intent to strike on March 4, 2021.

14.

As a result of Defendant's breach, Plaintiff and the community will suffer irreparable harm.

15.

Between the date OFNHP issued the strike notice and the date the NLRB rules on Plaintiff's charge, Plaintiff has no adequate remedy at law.

16.

Plaintiff is entitled to its reasonable attorney fees incurred in this action, in an amount to be proven at trial.

WHEREFORE, Plaintiff prays that the Court enter judgment in favor of Plaintiff and against Defendant as follows:

A. for an injunction enjoining Defendant from going out on strike on March 4, 2021 based on its February 22, 2021 non-compliant strike notice; and

B. for such other relief as the Court finds just and equitable.

1 DATED this 25th day of February, 2021.

2 **DAVIS WRIGHT TREMAINE LLP**

3
4 By s/ Sarah Ames Benedict

5 Sarah Ames Benedict, OSB #132675 (Trial Attorney)

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7 Derek Green, OSB #042960

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11 Attorneys for Plaintiff St. Charles Health System, Inc.

Exhibit B

IN THE CIRCUIT COURT FOR THE STATE OF OREGON
FOR THE COUNTY OF DESCHUTES

ST. CHARLES HEALTH SYSTEM, INC., an
Oregon nonprofit corporation,

Plaintiff,

v.

OREGON FEDERATION OF NURSES AND
HEALTH PROFESSIONALS, LOCAL 5017,
AFT, AFL-CIO,

Defendant.

Case No.

**PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

Oral Argument Requested

Expedited Consideration Requested

REQUEST FOR EXPEDITED ORAL ARGUMENT

Pursuant to UTCR 5.050, plaintiff requests oral argument on this motion as soon as possible. Plaintiff estimates 30 minutes are necessary. Official court reporting services are not requested.

MOTION

Pursuant to ORCP 79, plaintiff St. Charles Health System, Inc. ("St. Charles") moves the Court for an order:

1. Temporarily restraining Defendant Oregon Federation of Nurses and Health Professionals, Local 5017, AFT, AFL-CIO ("OFNHP") from striking, pending resolution of the currently pending charge before the National Labor Relations Board ("NLRB"); and
2. Directing OFNHP to appear before this Court and to show cause, if any, why the Court should not grant a preliminary injunction to maintain the status quo while the parties seek resolution before the NLRB.

1 The safety and welfare of the citizens who depend upon St. Charles to provide essential
 2 healthcare services will be irreparably harmed if OFNHP is permitted to illegally strike on
 3 March 4, 2021. Further, if OFNHP is permitted to illegally strike before the NLRB can rule on
 4 the matter, St. Charles will suffer irreparable harm because it will be forced to reduce its
 5 operations at a time when efficient operations are especially critical to the resumption of delayed
 6 patient care and state-wide vaccination efforts. Given the current strain on the healthcare system
 7 nationwide, replacement workers are in short-supply and the legally required thirty-day notice
 8 period for dispute resolution with the Federal Mediation and Conciliation Service (“FMCS”)
 9 must be strictly enforced to allow the parties to fully explore whether a work stoppage can be
 10 averted.

11 This motion is supported by the accompanying memorandum of law below and the
 12 concurrently-filed Declaration of Rebecca Berry.

13 POINTS AND AUTHORITIES

14 A. Facts.

15 The threatened strike by OFNHP would endanger the public health and safety of the
 16 Central Oregon communities that St. Charles serves. As of February 24, 2021, St. Charles
 17 continues to ration access to surgical and procedural care. Declaration of Rebecca Berry (“Berry
 18 Decl.”), ¶ 8. St. Charles has a backlog of nearly 1,000 patients waiting for surgical care and has
 19 not yet been able to return to any normal volumes. Berry Decl., ¶ 8. Early in the pandemic, St.
 20 Charles convened a panel of medical staff to be responsible for reviewing patients needing
 21 surgical & procedural care. Berry Decl., ¶ 8. This process was originally required by the
 22 Governor’s orders, and St. Charles has continued to rely on this process to ration the limited
 23 capacity for this type of care according to clinical acuity and the anticipated risk of death or
 24 additional harm to patients without access. Berry Decl., ¶ 8. There are many factors limiting its
 25 capacity independent of the threatened OFNHP strike, which significantly complicates St.
 26 Charles’s efforts to care for the community. Berry Decl., ¶ 8.

1 The main hospital campus is consistently running at or near capacity without the addition
 2 of elective inpatient case volumes. Berry Decl., ¶ 8. This is being driven by high volumes of
 3 acutely ill patients that are hospitalized with conditions that have been exacerbated by delayed
 4 care including record numbers of emergent stroke patients. Berry Decl., ¶ 8. St. Charles
 5 evaluates daily, as a system, bed capacity and how it might transfer patients within the system to
 6 receive care. Berry Decl., ¶ 8. There has been limited ability to do this based on the continued
 7 high census of the other three St Charles hospitals. Berry Decl., ¶ 8. Additionally, St. Charles
 8 has compounded challenges with length of stay as community skilled nursing and assisted living
 9 facilities continue to struggle to admit patients from the hospital setting. Berry Decl., ¶ 8.

10 In addition to these local factors, St. Charles is also committed to serve as the Regional
 11 Resource Hospital for Oregon's Region 7. Berry Decl., ¶ 8. As the region's primary trauma
 12 center and the largest referral hospital for over 40,000 square miles of the state's geography,
 13 maintaining capacity and access for urgent & emergent patient care needs is critical. Berry
 14 Decl., ¶ 8.

15 St. Charles recognizes caregivers' right to strike, but that right must be exercised within
 16 the boundaries of the law. OFNHP sent the defective 29 U.S.C. 158(g) notice (the "8(g) notice")
 17 to St. Charles on February 22, 2021. Berry Decl., ¶ 2. The notice relates to the approximately
 18 150 technical caregivers on the Bend campus currently represented by OFNHP, and threatens a
 19 strike of indefinite duration to begin at 8 a.m. on March 4, 2021. *Id.*

20 **1. The parties are currently negotiating their first Collective Bargaining**
 21 **Agreement.**

22 OFNHP and St. Charles are negotiating a first Collective Bargaining Agreement
 23 ("CBA"), for approximately 150 technical caregivers who were previously non-unionized. Berry
 24 Decl., ¶ 4. The covered employees include all full time, part time and per diem technical
 25 employees in the following job classifications: all cath lab technologists, certified surgical
 26 technologists, CT technologists, echo technologists, nuclear med technologists, neurodiagnostic

1 technologists, radiologic technologists, radiation therapy technologists, respiratory therapists,
 2 surgical technologists, ultrasound technologists, vascular/cath technologists, and x-ray
 3 technologists. Berry Decl., ¶ 2.

4 Recognizing the critical importance of healthcare workers to society, the National Labor
 5 Relations Act (“NLRA”) has special provisions that govern strikes in the healthcare context. In
 6 the case of a dispute over a first CBA (as opposed to a successor CBA with already agreed upon
 7 terms), the NLRA requires the union to provide thirty days’ notice of a contract dispute to the
 8 FMCS, as well as the state counterpart, to provide the parties with the benefit of mediation
 9 before a work stoppage occurs. 29 U.S.C. 158(d)(B). This pre-strike resource is critical to
 10 ensuring that negotiations for a first CBA do not result in interruptions in patient care without
 11 good faith attempts at consensus.

12 **2. OFNHP failed to comply with the thirty-day notice requirement and**
 13 **intends to strike on March 4, 2021.**

14 OFNHP failed to provide the requisite thirty-day notice of the contract dispute to the
 15 FMCS, which would have allowed FMCS to work with the parties to resolve the dispute without
 16 a work stoppage. Instead, OFNHP provided only an 8(g) notice, giving St. Charles ten days to
 17 prepare for the strike. Berry Decl., ¶ 2, OFNHP knew when the notice issued that the first day
 18 of mediated negotiations had already been scheduled for March 10. Berry Decl., ¶ 4. Still, it
 19 selected a strike date *before* the scheduled mediation could occur, presumably because it
 20 believed it could obtain wage concessions from St. Charles under the threat of a strike.
 21 Importantly, by skipping the thirty-day notice to the FMCS, OFNHP deprived both parties of
 22 mediation services that could have resolved the underlying labor dispute prior to any work
 23 stoppage.

24 In addition to adding staffing concerns during a critical period when St. Charles is
 25 attempting to reduce the backlog of patients waiting for surgical and procedural care, the strike
 26 creates heightened risk of virus transmission due to the transportation of replacement workers.

1 The threatened strike also jeopardizes the continuity of patient care due to COVID-19 impact on
 2 the number of replacement workers able to report for training and orientation consistent with the
 3 Governor's emergency order and applicable state and federal guidelines. Berry Decl., ¶ 3.

4 **3. The parties have further mediation scheduled, just days after OFNHP**
 5 **purports to strike.**

6 The impropriety of OFNHP's proposed strike is further underscored by the fact that the
 7 parties have long been scheduled for an initial mediation session with the FMCS on March 10,
 8 just six days after the strike is to commence. Berry Decl., ¶ 4. In other words, rather than wait to
 9 determine whether the issues in dispute could be resolved in mediation already agreed-to by
 10 OFNHP, OFNHP intends to illegally force a work stoppage without ever giving its members the
 11 benefit of FMCS conciliation services. Moreover, there is no explanation in the strike notice or
 12 other communication as to why this strike over wages is necessary, six days before mediation is
 13 to occur on these terms. If wage issues are resolved six days after the strike begins, OFNHP will
 14 have suffered no appreciable harm. Even if there were harm associated with this delay, it may be
 15 easily remedied in the negotiations process with back pay demands. OFNHP's manipulation of
 16 the negotiation process comes at the expense of the entire community served by St. Charles.

17 **4. The propriety of OFNHP's March 4 strike notice is already pending**
 18 **before the NLRB.**

19 St. Charles immediately raised OFNHP's defective strike notice to OFNHP and requested
 20 that the defective notice be voluntarily withdrawn. Berry Decl., ¶ 5. When OFNHP refused to
 21 withdraw the notice, St. Charles filed an unfair labor practice charge with the NLRB, the
 22 administrative body responsible for adjudicating this dispute. Berry Decl., ¶ 6. St. Charles
 23 seeks, among other remedies, a cease and desist order as well as injunctive relief. *Id.*
 24 Unfortunately, it is not possible for the NLRB to act quickly enough to prevent the strike. Berry
 25 Decl., ¶ 7. It is therefore imperative that this Court issue a temporary restraining order
 26 prohibiting any strike activity until the NLRB is able to reach a decision on this unfair labor
 practice charge and take appropriate action.

5. St. Charles provides a critical service to the community and continues to experience COVID-19 related strains on its resources.

St. Charles's ability to provide health care to the community will be severely compromised if this strike of indefinite duration proceeds on March 4. Berry Decl., ¶ 8. St. Charles must retain replacement workers to provide continuity of care for the community. *Id.* These replacement workers are located throughout the United States and would typically travel to Bend to begin their orientation and transition in advance of the strike. *Id.* Given the reduced notice and the COVID-19 travel restrictions, OFNHP has placed community care unnecessarily at risk by cutting short the time that would ordinarily be available to ensure a smooth transition for replacement workers. Berry Decl., ¶ 9. Although St. Charles acted immediately to secure replacement workers in the event the strike proceeds on March 4 as planned, it has learned from the Oregon Board of Medical Imaging that out-of-state workers will not be certified by March 4 to work in Bend. Berry Decl., ¶ 9. There are insufficient in-state workers, meaning services will be impacted if the strike proceeds. Berry Decl., ¶ 9.

There is no other hospital in Bend or the surrounding community equipped to provide the full array of services provided by the Medical Center. Berry Decl., ¶ 10. Due to the postponement of non-emergency surgeries during the second surge of the COVID-19 pandemic, there is a backlog of patients requiring surgeries and procedures that will be further delayed if the threatened strike commences on March 4. Berry Decl., ¶ 11. OFNHP's failure to provide appropriate notice has, among other things, jeopardized the efforts to reduce this backlog to allow patients access to this much awaited and necessary care. Berry Decl., ¶ 12.

B. Standard for a Temporary Restraining Order.

A temporary restraining order is available "[w]hen it appears that a party is entitled to relief demanded in a pleading, and such relief, or any part thereof, consists of restraining the commission or continuance of some act, the commission or continuance of which during the litigation would produce injury to the party seeking the relief," ORCP 79 A(1)(a), or "[w]hen it appears that the party against whom a judgment is sought is doing or threatens, or is about to do,

1 or is procuring or suffering to be done, some act in violation of the rights of a party seeking
 2 judgment concerning the subject matter of the action, and tending to render the judgment
 3 ineffectual.” ORCP 79 A(1)(b).

4 “[T]he issuance of an injunction requires an ‘appreciable threat of continuing harm.’”
 5 *Knight v. Nyara*, 240 Or App 586, 597 (2011) (quoting *Bates v. Motor Vehicles Div.*, 30 Or App
 6 791, 794, (1977)). Moreover, the purpose of a temporary restraining order or preliminary
 7 injunction is to preserve the status quo during the pendency of the case by preventing material
 8 injury to rights asserted in the litigation. *State ex rel. McKinley Automotive, Inc. v. Oldham*, 283
 9 Or 511, 515, 584 P2d 741 (1978). “[T]he status quo to be preserved should be the last
 10 undisputed state of affairs that existed before the events that gave rise to the pending controversy
 11 occurred.” *Id.*

12 1. St. Charles is likely to prevail on the merits before the NLRB.

13 The NLRB is tasked with determining whether OFNHP complied with all notice
 14 requirements in issuing its March 4 strike notice. St. Charles is likely to prevail on its charge.
 15 Indeed, the plain reading of the applicable statute, 29 U.S.C. 158 (“Section 8”), can lead to no
 16 other conclusion. The statute at issue, reads in relevant part:

- 17 • “A labor organization before engaging in any strike, picketing, or other concerted
 18 refusal to work at any health care institution shall, not less than ten days prior to
 19 such action, notify the institution in writing and the Federal Mediation and
 20 Conciliation Service of that intention, *except that in the case of bargaining for an*
 21 *initial agreement following certification or recognition the notice required by this*
subsection shall not be given until the expiration of the period specified in clause
(B) of the last sentence of subsection (d).” Section 8(g) (emphasis added).
- 22 • The last sentence of subsection (d) states: “Where the bargaining is for an *initial*
 23 *agreement* following certification or recognition, *at least thirty days’ notice* of
 24 the existence of a dispute shall be given by the labor organization *to the agencies*
set forth in paragraph (3) of this subsection.” Section 8(d)(B) (emphasis added).
- 25 • Paragraph (3) in turn says: “That where there is in effect a collective-bargaining
 26 contract covering employees in an industry affecting commerce, the duty to

1 bargain collectively shall also mean that no party to such contract shall terminate
 2 or modify such contract, unless the party desiring such termination or
 3 modification—... ***notifies the Federal Mediation and Conciliation Service***
 4 ***within thirty days after such notice of the existence of a dispute, and***
 5 ***simultaneously therewith notifies any State or Territorial agency established to***
 6 ***mediate and conciliate disputes within the State or Territory where the dispute***
 7 ***occurred***, provided no agreement has been reached by that time.” Section 8(d)(3)
 8 (emphasis added).

9 As is apparent from the text, Section 8(g) imposes an ***additional 30-day notice***
 10 requirement when, as here, the parties are negotiating an initial contract. To satisfy that
 11 requirement, the union must provide notice of “a dispute” to both the FMCS and to, in this case,
 12 the Oregon Employee Relations Commissions, no fewer than thirty days in advance of the
 13 planned strike. Only after that thirty-day period expires can the union serve the addition ten-day
 14 notice required under 8(g). Because the OFNHP has provided only the ten-day notice and not
 15 the predicate thirty-day notice, the union has not complied with all of the notice requirements
 16 under 8(g).

17 OFNHP disputes this interpretation of the Act, contending it need not comply with the
 18 additional thirty-day notice for initial contracts, and, in any event, its initial bargaining notice
 19 from 2019 at the outset of bargaining satisfies any such requirement. OFNHP is mistaken. As
 20 the Board explained in *Univ. of Pittsburgh Med. Ctr.*, 317 NLRB 235 (1995):

21 “A dispute under Section 8(d)(B) arises not with the initial bargaining
 22 demand, but after the Respondent has refused the demand or the parties
 23 otherwise fail to reach agreement. The notice requirements of Section
 24 8(d)(B) (and Section 8(g)) are intended to give mediation agencies an
 25 opportunity to effect a settlement of such initial contract disputes before a
 26 strike or other work action is commenced.”

Thus, for purposes of an initial contract, a notice provided to FMCS at the outset of bargaining—
 and, importantly, before either party has refused to bargain or reach an agreement—is not notice
 “of the existence of a dispute” for purposes of the 30-day notice requirement. If it were
 otherwise, Congress’ intent of affording mediation agencies an opportunity to resolve such
 dispute before strike activity commences in health care settings would be rendered meaningless.

1 It is also worth noting that St. Charles’s plain text interpretation is consistent with the
 2 NLRB’s publicly pronounced interpretation of Section 8(g). The NLRB’s [Basic Guide to](#)
 3 [Collective Bargaining](#) contemplates an “addition[al]” “30-day notice requirement when a dispute
 4 arises in bargaining for an initial contract” for health care institutions. Similarly, the NLRB’s
 5 [website](#) explains that the union violates Section 8(d) and 8(b)(3) by “[e]ngag[ing] in any strike,
 6 picketing, or other concerted refusal to work by employees of a healthcare institution without
 7 having furnished notice, no less than 10 days before such action, to the institution (in writing)
 8 and the Federal Mediation and Conciliation Service of that action. *If you are bargaining for an*
 9 *initial agreement, the notice period is no less than 30 days.*” (Emphasis added).

10 In sum, St. Charles will prevail on this argument before the NLRB. Unfortunately, given
 11 the tight timeframe imposed by the OFNHP’s non-compliant strike notice, it is unlikely the
 12 NLRB will be able to issue a ruling before the noticed strike date. An injunction here is St.
 13 Charles’s only opportunity to avoid irreparable harm.

14 **2. In the absence of an injunction, there exists an appreciable threat of**
 15 **continuing harm to the public.**

16 As discussed above, St. Charles fills a critical role in the community. The impact that a
 17 strike could have on continued operations cannot be overstated. In addition to a backlog of
 18 procedures that has developed during the pandemic, the hospital plays a crucial role ensuring the
 19 health and wellbeing of the Bend, Oregon community. Despite St. Charles’s best efforts,
 20 replacement workers cannot be certified by the state’s Board of Medical Imaging in time to
 21 ensure continued operations. The strike will impact a number of vitally important departments in
 22 the hospital, departments that treat critically ill patients. If allowed to go forward on March 4,
 23 treatments in the cath lab, radiology, radiation therapy, respiratory therapy, and many other
 24 departments will suffer.

25 The NLRB will determine when OFNHP is legally permitted to strike. If OFNHP is
 26 permitted to commence its strike *before* the NLRB is able to issue its injunction, there is the

1 potential for serious harm to the community.

2 **3. In the absence of an injunction, St. Charles will suffer irreparable**
 3 **injury that cannot be compensated by monetary damages.**

4 Although OFNHP seeks to strike over its wage demands, the potential harm to St.
 5 Charles's operations – and by extension the entire community – goes far beyond money claims.
 6 Indeed, this injunction is the *only* way to ensure that the proper authority, the NLRB, is able to
 7 consider the rule on this issue before actual harm is caused by the threatened strike. Unlike pre-
 8 pandemic healthcare, replacement workers are in short supply nationwide, and inter-state travel
 9 delays makes finding coverage for the striking workers even more difficult. St. Charles has
 10 already confirmed that, despite its best efforts, replacement workers will not arrive by March 4.

11 **4. The status quo should be preserved until the NLRB can rule.**

12 St. Charles is not seeking a permanent injunction, nor does it claim that workers cannot
 13 strike during a pandemic. To the contrary, St. Charles recognizes caregivers' right to engage in
 14 lawful strike activity and the authority of the NLRB over the notice issue raised here. St. Charles
 15 is simply asking that this Court ensure that the proper adjudicating body is able to complete its
 16 review and issue its decision in a meaningful way before the irreparable harm that would be
 17 caused by this (illegal) strike occurs. By issuing an injunction this Court ensures that patient
 18 care will not be compromised while the NLRB considers the issue.

19 **C. This Court Should Require No (or Minimal) Security under ORCP 82A.**

20 Under ORCP 82(A)(1)(b)(ii), this Court should not require security accompany its
 21 injunction. Security is not required where "[a] restraining order or preliminary injunction is
 22 sought to prevent unlawful conduct when the effect of the injunction is to restrict the enjoined
 23 party to available judicial remedies." This is precisely the situation here.

24 As discussed above, the proposed temporary restraining order merely requires OFNHP
 25 proceed in accordance with the decision made by the NLRB. OFNHP will not be required to go
 26 to any expense or effort to comply with this injunction, it will simply be delayed from engaging

1 in a strike on March 4 while the parties work with FMCS to resolve the underlying dispute.
2 Under these circumstances, it is appropriate for the Court to waive the security requirement. In
3 the event, however, that this Court requires security, plaintiff is ready and able to provide a bond
4 in the amount required by the Court.

5 **CONCLUSION**

6 In light of the foregoing, St. Charles respectfully requests the Court to enter an order
7 restraining OFNHP from striking or issuing another 8(g) notice before the sooner of 1) the
8 NLRB ruling on St. Charles's currently pending charge, or 2) 10 days have elapsed from the
9 issuing of this order. St. Charles also requests that the order waive the security requirement as
10 permitted by ORCP 82A, and order OFNHP to show cause, if any, why the Court should not
11 grant a preliminary injunction to maintain the status quo until the NLRB can issue its ruling.

12 DATED this 25th day of February, 2021.

13 **DAVIS WRIGHT TREMAINE LLP**

14
15 By s/ Sarah Ames Benedict

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18
19 Attorneys for Plaintiff St. Charles Health System, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE** on:

Sam Lieberman
AFT Legal Department
555 New Jersey Avenue NW
Washington, DC 20001
Telephone (202) 368-4596
Email sam.lieberman@aft.org

Of Attorneys for Defendant

☒ by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to said attorney's last-known address and deposited in the U.S. mail at Portland, Oregon on the date set forth below;

☐ by causing a copy thereof to be hand-delivered to said attorney's address as shown above on the date set forth below;

☐ by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to said attorney's last-known address on the date set forth below;

☐ by faxing a copy thereof to said attorney at his/her last-known facsimile number on the date set forth below;

☒ by emailing a copy thereof to said attorney at his/her last-known email address as set forth above; or

☐ by using electronic transmission of a notice of filing by the electronic filing system provided by the Oregon Judicial Department, Odyssey File and Serve.

Dated this 25th day of February 2021.

DAVIS WRIGHT TREMAINE LLP

By: s/ Sarah Ames Benedict

Sarah Ames Benedict, OSB #132675

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Attorneys for Plaintiff St. Charles Health System, Inc.

Exhibit C

IN THE CIRCUIT COURT FOR THE STATE OF OREGON

FOR THE COUNTY OF DESCHUTES

ST. CHARLES HEALTH SYSTEM, INC., an
Oregon nonprofit corporation,

Plaintiff,

v.

OREGON FEDERATION OF NURSES AND
HEALTH PROFESSIONALS, LOCAL 5017,
AFT, AFL-CIO,

Defendant.

Case No.

**DECLARATION OF REBECCA
BERRY IN SUPPORT OF
PLAINTIFF'S MOTION FOR
TEMPORARY RESTRAINING ORDER
AND ORDER TO SHOW CAUSE WHY
PRELIMINARY INJUNCTION
SHOULD NOT ISSUE**

I, Rebecca Berry, declare:

1. I am the Vice President, Human Resources of St. Charles Health System, Inc., an Oregon nonprofit corporation.

2. Attached as **Exhibit 1** is a true and correct copy of the strike notice OFNHP served on St. Charles on February 22, 2021. This notice purports to cover approximately 150 technical caregivers at the Bend campus of St. Charles, and threatens a strike of indefinite duration to begin at 8 am on March 4, 2021. The covered employees include all full time, part time and per diem technical employees in the following job classifications: all cath lab technologists, certified surgical technologists, CT technologists, echo technologists, nuclear med technologists, neurodiagnostic technologists, radiologic technologists, radiation therapy technologists, respiratory therapists, surgical technologists, ultrasound technologists, vascular/cath technologists, and x-ray technologists.

1 3. The strike jeopardizes the continuity of patient care due to COVID-19's impact on
2 the number of replacement workers able to report for training and orientation consistent with the
3 Governor's emergency order and applicable state and federal guidelines.

4 4. The parties are currently negotiating their first Collective Bargaining Agreement,
5 and were scheduled for an initial mediation session with the Federal Mediation and Conciliation
6 Service ("FMCS") on March 10, weeks before OFNHP issued its strike notice.

7 5. St. Charles immediately raised OFNHP's defective strike notice to OFNHP and
8 requested that the defective notice be withdrawn.

9 6. When OFNHP refused to withdraw the notice, St. Charles filed an unfair labor
10 practice charge with the NLRB, seeking, among other things, a cease and desist order as well as
11 injunctive relief. Attached as **Exhibit 2** is a true and correct copy of that charge.

12 7. The NLRB has advised St. Charles that the charge will not be resolved prior to the
13 March 4, 2021 strike date.

14 8. As of February 24, 2021, St. Charles continues to ration access to surgical and
15 procedural care. St. Charles has a backlog of nearly 1,000 patients waiting for surgical care and
16 has not yet been able to return to any normal volumes. Early in the pandemic, St. Charles
17 convened a panel of medical staff to be responsible for reviewing patients needing surgical &
18 procedural care. This process was originally required by the Governor's orders and St. Charles
19 has continued to rely on this process to ration our limited capacity for this type of care according
20 to clinical acuity and the anticipated risk of death or additional harm to patients without access.
21 There are many factors limiting our capacity independent of the threatened OFNHP strike, which
22 significantly complicates our efforts to care for the community.

23 Our main hospital campus is consistently running at or near capacity without the addition
24 of elective inpatient case volumes. This is being driven by high volumes of acutely ill patients
25 that are hospitalized with conditions that have been exacerbated by delayed care including record
26 numbers of emergent stroke patients. Daily St. Charles evaluates, as a system, bed capacity and

1 how it might transfer patients within the system to receive care. There has been limited ability to
2 do this based on the continued high census of the other three St Charles hospitals. Additionally,
3 St. Charles has compounded challenges with length of stay as community skilled nursing and
4 assisted living facilities continue to struggle to admit patients from the hospital setting.

5 In addition to these local factors, St. Charles is also committed to serve as the Regional
6 Resource Hospital for Oregon's Region 7. As the region's primary trauma center and the largest
7 referral hospital for over 40,000 square miles of the state's geography, maintaining capacity and
8 access for urgent & emergent patient care needs is critical.

9 St. Charles's ability to provide health care to the community will be severely
10 compromised if it is not given the full notice to which it is entitled. St. Charles must retain
11 replacement workers to provide continuity of care for the community. These replacement
12 workers are located throughout the United States and would typically travel to Bend to begin
13 their orientation and transition in advance of the strike, to ensure continuity of care for impacted
14 patients.

15 9. Given the loss of the thirty day notice of dispute period during which FMCS
16 would have been able to work with the parties to effect resolution and COVID-19 it will be
17 difficult, if not impossible, for St. Charles to find sufficient replacement workers in time for a
18 March 4, 2021 strike. St. Charles is diligently working to find replacement workers, however
19 received notice on February 25 that the Oregon Board of Medical Imaging will be unable to
20 certify out-of-state workers by the March 4 strike date.

21 10. There is no other hospital in Bend or the surrounding community equipped to
22 provide the full array of services provided by the Medical Center.

23 11. OFNHP's failure to provide appropriate notice has jeopardized the surgery
24 schedule and much awaited and necessary care.

25 *I hereby declare that the above statements are true to the best of my knowledge and*
26 *belief, and that I understand that this declaration is made for use as evidence in court and is*

1 *subject to penalty for perjury.*

2 DATED this 25th day of February, 2021.

3 

4 Rebecca Berry



www.ofnhp.org
itsmyunion@ofnhp.org
(503) 657-9974

VIA ELECTRONIC MAIL

February 22, 2021

Paula Lehmann
Davis Wright Tremaine LLP
929 108th Avenue NE, Suite 1500
Bellevue, WA 98004
E-mail: paulalehmann@dwt.com

Hillary A. Forrest
Director, Human Resources
St. Charles Health System
2500 NE Neff Road
Bend, OR 97701
E-mail: haforrest@stcharleshealthcare.org

RE: NLRA § 8(g) Notice of Strike and Picket

Dear Ms. Lehmann & Ms. Forrest:

Pursuant to Section 8(g) of the National Labor Relations Act, the Oregon Federation of Nurses and Health Professionals, Local 5017, AFT, AFL-CIO (hereinafter, the union) is hereby providing notice that it will engage in a strike, picket, and other protected concerted activity at St. Charles Bend, located at 2500 NE Neff Road, Bend, Oregon 97701.

The activity that is the subject of this notice will commence at 8:00 a.m. on Thursday, March 4, 2021.

Copies of this notice are hereby being sent electronically to the Federal Mediation and Conciliation Service and the Oregon Employment Relations Board.

If you have any questions, feel free to contact me at 303-921-0831.

Very truly yours,

David Stylianou
Chief Negotiator

cc: Federal Mediation and Conciliation Service
Oregon ERB


**Please Review the Following
Important Information
Before Filling Out a Charge Form!**

- Please call an Information Officer in the Regional Office nearest assistance in filing a charge. The Information Officer will be happy to answer your questions about the charge form or to draft the charge on your behalf. Seeking assistance from an Information Officer may help you to avoid having the processing of your charge delayed or your charge dismissed because of mistakes made in completing the form.
- Please be advised that not every workplace action that you may view as constitutes an unfair labor practice within the jurisdiction of the National Labor Relations Act (NLRA). Please click on the Help Desk button for more information on matters covered by the NLRA.
- The section of the charge form called, "Basis of Charge," seeks only a brief description of the alleged unfair labor practice. You should **NOT** include a detailed recounting of the evidence in support of the charge or a list of the names and telephone numbers of witnesses.
- After completing the charge form, be sure to sign and date the charge and or deliver the completed form to the appropriate Regional Office.
- A charge should be filed with the Regional Office which has jurisdiction the geographic area of the United States where the unfair labor practice occurred. For example, an unfair labor practice charge alleging that an employer unlawfully discharged an employee would usually be filed with the Regional Office having jurisdiction over the worksite where the employee was employed prior to his/her discharge. An Information Officer will be pleased to assist you in locating the appropriate Regional Office in which to file your charge.
- The NLRB's Rules and Regulations state that it is the responsibility individual, employer or union filing a charge to timely and properly serve a copy of the charge on the person, employer or union against whom such charge is made.
- By statute, only charges filed and served within **six (6) months** of the the event or conduct, which is the subject of that charge, will be processed by the NLRB.

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD
**CHARGE AGAINST LABOR ORGANIZATION
OR ITS AGENTS**

DO NOT WRITE IN THIS SPACE	
Case	Date Filed

INSTRUCTIONS: File an original with NLRB Regional Director for the region in which the alleged unfair labor practice occurred or is occurring.

1. LABOR ORGANIZATION OR ITS AGENTS AGAINST WHICH CHARGE IS BROUGHT			
a. Name Oregon Federation of Nurses & Health Professionals		b. Union Representative to contact David Stylianou	
c. Address (Street, city, state, and ZIP code) 11560 SW 67th Ave., Suite 100 Tigard, OR 97223		d. Tel. No. 303-921-0831	e. Cell No.
		f. Fax No.	
		g. e-mail dstylian@aft.org	
h. The above-named labor organization has engaged in and is engaging in unfair labor practices within the meaning of section 8(b) and (list subsections) 8(b)(3) and 8(d) of the National Labor Relations Act, and these unfair labor practices are practices affecting commerce within the meaning of the Act, or these unfair labor practices affecting commerce within the meaning of the Act and the Postal Reorganization Act.f			
2. Basis of the Charge (set forth a clear and concise statement of the facts constituting the alleged unfair labor practices) <u>OFNHP</u> issued a non-compliant 8(g) notice for a strike of indefinite duration to commence on March 4 involving a bargaining unit of approximately 150 technical employees. Specifically, <u>OFNHP</u> is negotiating a first contract. <u>OFNHP</u> failed to provide the mandatory 30 day notice of dispute under Section 8(d)(B) to FMCS or the appropriate state agency. St. Charles asked <u>OFNHP</u> to provide documentation that notice was given by noon today. <u>OFNHP</u> has failed to do so. St. Charles seeks immediate 10j relief to prevent this strike until proper notice is given. The urgency of injunctive relief is present where, as here, the pandemic is ongoing, the Employer is engaged in COVID care and running vaccination clinics over three counties.			
3. Name of Employer St. Charles Medical Center - Bend		4a. Tel. No.	b. Cell No.
		c. Fax No.	
		d. e-mail	
5. Location of plant involved (street, city, state and ZIP code) 2500 NE Neff Rd Bend, OR 977-1-6015		6. Employer representative to contact Rebecca Berry, Vice President Human Resources	
7. Type of establishment (factory, mine, wholesaler, etc.) General Acute Care Hospital	8. Identify principal product or service Medical care		9. Number of workers employed 1000+
10. Full name of party filing charge Paula L. Lehmann			
11. Address of party filing charge (street, city, state and ZIP code) 929 108th Ave. NE, Suite 1500, Bellevue WA 98004		11a. Tel. No. 425-646-6186	b. Cell No. 206-235-5332
		c. Fax No.	
		d. e-mail paulalehmann@dwt.com	
12. DECLARATION I declare that I have read the above charge and that the statements are true to the best of my knowledge and belief.  _____ (signature of representative or person making charge)		Tel. No. 4256466186	
Paula Lehmann _____ (Print/type name and title or office, if any)		Cell No. 206-235-5332	
929 108th Ave. NE, Suite 1500, Bellevue WA 98004 Address		Fax No.	
Date 2/23/2021		e-mail paulalehmann@dwt.com	

**WILLFUL FALSE STATEMENTS ON THIS CHARGE CAN BE PUNISHED BY FINE AND IMPRISONMENT (U.S. CODE, TITLE 18, SECTION 1001)
PRIVACY ACT STATEMENT**

Solicitation of the information on this form is authorized by the National Labor Relations Act (NLRA), 29 U.S.C. § 151 et seq. The principal use of the information is to assist the National Labor Relations Board (NLRB) in processing unfair labor practice and related proceedings or litigation. The routine uses for the information are fully set forth in the Federal Register, 71 Fed. Reg. 74942-43 (Dec. 13, 2006). The NLRB will further explain these uses upon request. Disclosure of this information to the NLRB is voluntary; however, failure to supply the information may cause the NLRB to decline to invoke its processes.

EXHIBIT 2 TO BERRY DECL.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **DECLARATION OF REBECCA BERRY IN SUPPORT OF PLAINTIFF'S MOTION FOR TEMPORARY RESTRAINING ORDER AND ORDER TO SHOW CAUSE WHY PRELIMINARY INJUNCTION SHOULD NOT ISSUE** on:

Sam Lieberman
AFT Legal Department
555 New Jersey Avenue NW
Washington, DC 20001
Telephone (202) 368-4596
Email sam.lieberman@aft.org

Of Attorneys for Defendant

☒ by mailing a copy thereof in a sealed, first-class postage prepaid envelope, addressed to said attorney's last-known address and deposited in the U.S. mail at Portland, Oregon on the date set forth below;

☐ by causing a copy thereof to be hand-delivered to said attorney's address as shown above on the date set forth below;

☐ by sending a copy thereof via overnight courier in a sealed, prepaid envelope, addressed to said attorney's last-known address on the date set forth below;

☐ by faxing a copy thereof to said attorney at his/her last-known facsimile number on the date set forth below;

☒ by emailing a copy thereof to said attorney at his/her last-known email address as set forth above; or

☐ by using electronic transmission of a notice of filing by the electronic filing system provided by the Oregon Judicial Department, Odyssey File and Serve.

Dated this 25th day of February 2021.

DAVIS WRIGHT TREMAINE LLP

By: s/ Sarah Ames Benedict

Sarah Ames Benedict, OSB #132675

sarahames@dwt.com

Derek Green, OSB #042960

derekgreen@dwt.com

Attorneys for Plaintiff St. Charles Health System, Inc.